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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 ANTONIO D. HARPER,
9 Plaintiff,
vs.
10 JOSEPH LOMBARDO, et al.,
11 Defendants.

Case No. 2:22-cv-00250-ART-VCF
Report and Recommendation for Dismissal
Amended Complaint (ECF No. 5)

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13 I previously granted pro se plaintiff Antonio D. Harper's application to proceed in forma
14 pauperis and dismissed his complaint with leave to amend. ECF No. 3. Plaintiff filed an amended
15 complaint, which I now screen. ECF No. 5. I recommend that plaintiff's amended complaint be
16 dismissed.

17 For brevity I will not repeat my entire analysis here, but I previously found that plaintiff had
18 failed to state Fourth Amendment, Fourteenth Amendment, and False Arrest claims pursuant to Rule 8.
19 ECF No. 3. I also found that plaintiff failed to state a respondeat superior claim against Sheriff
20 Lombardo. *Id.* at 6.

21 Plaintiff's amended complaint is even more difficult to follow than his first complaint. ECF No.
22 5. Plaintiff still brings claims for false arrest and violations of the Fourth and Fourteenth Amendment.
23 *Id.* He states:

24 Under the Fourteenth Amendment the authority's (sic) of the State of Nevada
25 violated the petitioner's rights to life and liberty and property without due process

1 of law. Body cam footage and no search warrant time stamped to matching body
 2 cam time stamp petitions that Sheriff Joseph Lombardo, Detective Jared Casper
 3 and Officer A. Stephens while on duty Aug 16 2021 and under color of law
 4 unconstitutionally violated the plaintiff's Fourth Amendment right detaining
 5 petitioner arresting petitioner and searching petitioners vehical (sic) without a
 6 search warrant and not a fourth waiver and subject to search and seizure.

7 See ECF No. 5 at 1-2 (emphasis in original; original written in all uppercase letters). It is unclear
 8 if plaintiff is alleging that Sheriff Lombardo personally participated in his arrest or if he merely refers to
 9 the Sheriff in this section of the complaint as a supervisor. Plaintiff also alleges that "fabrication, the
 10 corruption within the Las Vegas Metropolitan Police Dept Clark County Nevada" is what led to the
 11 violations of his rights. *Id.* at 5. Plaintiff's amended complaint does not address the respondeat superior
 12 or the Rule 8 issues I raised in my previous screening order because these allegations are nothing more
 13 than, "unadorned, the defendant unlawfully-harmed-me accusations." See my order at ECF No. 3 at 5,
 14 citing to *Iqbal*, 556 U.S. at 678.

15 Plaintiff's bare bone contentions in his amended complaint, that the officers wrongfully pulled
 16 him over, wrongfully seized him, and wrongfully searched his car without a warrant still lacks sufficient
 17 specific factual allegations to support any of the necessary elements of a Fourth or Fourteenth
 18 Amendment claim, as I analyzed in my last order. *Id.* Plaintiff also still does not indicate in his amended
 19 complaint whether he was charged and convicted, or whether charges were dropped, or whether any
 20 conviction has been invalidated, as I noted in my last order. *Id.*, citing to *Wallace v. Kato*, 549 U.S. 384,
 21 393-94, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007) and *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct.
 22 2364, 129 L. Ed. 2d 383 (1994).

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1 For all the reasons I discussed in my previous screening order, I recommend that Harper's case
2 be dismissed.

3 ACCORDINGLY,

4 I RECOMMEND that that this action be DISMISSED and Judgment entered.

5 **NOTICE**

6 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
7 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
8 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
9 may determine that an appeal has been waived due to the failure to file objections within the specified
10 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
11 objections within the specified time and (2) failure to properly address and brief the objectionable issues
12 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
13 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
14 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, the plaintiff must immediately file
15 written notification with the court of any change of address. The notification must include proof of
16 service upon each opposing party's attorney, or upon the opposing party if the party is unrepresented by
17 counsel. Failure to comply with this rule may result in dismissal of the action.

19 IT IS SO RECOMMENDED.

20 DATED this 27th day of June 2022.

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23 CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
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